

HOUSE No. 167

By Mr. Walsh of Boston, petition of Martin J. Walsh and others that provision be made for binding arbitration for fire fighters and police officers. Public Service.

The Commonwealth of Massachusetts

PETITION OF:

Martin J. Walsh	Brian P. Wallace
Robert K. Coughlin	Joseph R. Driscoll
Michael F. Rush	

In the Year Two Thousand and Five.

AN ACT PROVIDING FOR BINDING ARBITRATION FOR FIRE FIGHTERS AND POLICE OFFICERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 If an employee organization duly recognized as representing
2 the firefighters or police officers of a city, town or district is
3 engaged in an impasse with said city, town, district or authority
4 which has continued for thirty days after the publication of the
5 fact-finders report pursuant to section nine of chapter one hundred
6 and fifty E of the General Laws, or, if the parties have mutually
7 waived the fact-finding provisions contained in said section nine
8 of said chapter one hundred and fifty E, said employee organiza-
9 tion shall petition the board to make an investigation. If, after an
10 investigation, the board determines that: 1. the requirements of
11 section nine of said chapter one hundred and fifty E have been
12 complied with in good faith by the employee organization; 2.
13 thirty days have passed since the date of publication of the fact-
14 finding report pursuant to said section nine; 3. the proceedings for
15 the prevention of any prohibited practices have been exhausted,
16 provided that any such complaints have been filed with the com-
17 mission prior to the date of the fact finder's report; and 4. an

18 impasse exists, the board shall notify the employer and the
19 employee organization that the issues in dispute shall be resolved
20 by a three-member arbitration panel, or wheno the parties mutu-
21 ally agree, the board shall select a single arbitrator in lieu of the
22 arbitration panel. Said panel shall be comprised of three arbitra-
23 tors, one selected by the employer, one selected by the employee
24 organization, and a third impartial arbitrator, who shall act as
25 chairman of the panel, who shall be selected by the two previously
26 selected arbitrators. In the event that either party fails to select an
27 arbitrator or for any reason there is a delay in the naming of an
28 arbitrator, or if the arbitrators fail to select a third arbitrator within
29 the time pre 32 scribed by the board, the board shall appoint the
30 arbitrator or arbitrators necessary to complete the panel, which
31 shall act with the same force and effect as if the panel had been
32 selected without intervention of the board. In the event that the
33 parties mutually elect to use a single arbitrator, selected by the
34 board, the parties shall immediately request the board to appoint
35 said arbitrator, who shall act with the same force and effect as if a
36 three member panel had been selected by the parties. The single
37 arbitrator or the arbitration panel acting through its chairman,
38 shall conduct a hearing within ten days after the date of appoint-
39 ment of its chairman, at a place within the locality of the munici-
40 pality involved, where feasible. The chairman shall give at least
41 seven days notice in writing to each of the othero arbitrators. The
42 chairman or single arbitrator shall give like notice to the represen-
43 tative of the municipal employer and employee organizations of
44 the time and place of such hearing. The single arbitrator or
45 chairman shall preside over the hearing and shall take testimony.
46 Upon application and for good cause shown, a person, labor orga-
47 nization, or governmental unit having substantial interest therein
48 may be granted leave to intervene by the arbitration panel. The
49 proceedings shall be informal. Any oral or documentary evidence
50 and other data deemed relevant by the arbitration panel or single
51 arbitrator may be received into evidence. The arbitrators shall
52 have the power to administer oaths and to require by subpoena the
53 attendance and testimony of witnesses, the production of books,
54 records, and other evidence relative to or pertinent to the issues
55 presented to them for determination. If any person refuses to obey
56 a subpoena, or refuses to be sworn or to testify, or if any witness,

57 party, or attorney is guilty of any contempt while in attendance at
58 any hearing, the arbitration panel or single arbitrator may, or the
59 district attorney if requested, shall invoke the aid of the superior
60 court within the jurisdiction in which the hearing is being held,
61 which court shall issue an appropriate order. A record of the pro-
62 ceedings shall be kept, and the chairman or single arbitrator shall
63 arrange for the necessary recording service. Transcripts may be
64 ordered at the expense of the party ordering them, but the tran-
65 scripts shall not be necessary for an award by the panel or single
66 arbitrator. The hearing may be continued at the discretion of the
67 panel or single arbitrator and shall be concluded within forty days
68 from the time of commencement. At the conclusion of the hearing,
69 each party shall submit a written statement containing its last and
70 best offer for each of the issues in dispute to the panel or single
71 arbitrator, who shall take said statements under advisement.
72 Within ten days after the conclusion of the hearing, a majority of
73 the panel, or the single arbitrator, shall select as the last and best
74 arbitration award either the employer's written statement of its last
75 and best offer, the employee organization's written statement of its
76 last and best offer, or the recommendation of the fact-finder, if a
77 fact-finding report and recommendations have been issued, and
78 immediately shall give written notice of the selection to the par-
79 ties. The selection shall be final and binding upon the parties and
80 upon the appropriate legislative body. Within thirty calendar days
81 of the last and best offer selection and award, the impartial chair-
82 person of the arbitration panel or, the single arbitrator, shall issue
83 a written opinion inclusive of an analysis of all statutory factors
84 applicable to the proceedings. At any time before the rendering of
85 an award, the chairman of the arbitration panel or single arbitrator,
86 if he is of the opinion that it would be useful or beneficial to do
87 so, may remand the dispute to the parties for further collective
88 bargaining for the period not to exceed three weeks and notify the
89 board of the remand. If the dispute is remanded for further collec-
90 tive bargaining the time provisions of this act shall be extended
91 for a time period equal to that of the remand. In the event that the
92 representatives of the parties mutually resolve each of the issues
93 in dispute and agree to be bound accordingly, said representatives
94 may, at any time prior to the final decisions by the panel, or single
95 arbitrator, request that the contempt while in attendance at any

96 hearing, the arbitration panel or single arbitrator may, or the dis-
97 trict attorney if requested, shall invoke the aid of the superior
98 court within the jurisdiction in which the hearing is being held,
99 which court shall issue an appropriate order. A record of the pro-
100 ceedings shall be kept, and the chairman or single arbitrator shall
101 arrange for the necessary recording service. Transcripts may be
102 ordered at the expense of the party ordering them, but the tran-
103 scripts shall not be necessary for an award by the panel or single
104 arbitrator. The hearing may be continued at the discretion of the
105 panel or single arbitrator and shall be concluded within forty days
106 from the time of commencement. At the conclusion of the hearing,
107 each party shall submit a written statement containing its last and
108 best offer for each of the issues in dispute to the panel or single
109 arbitrator, who shall take said statements under advisement.
110 Within ten days after the conclusion of the hearing, a majority of
111 the panel, or the single arbitrator, shall select as the last and best
112 arbitration award either the employer's written statement of its
113 last and best offer, the employee organization's written statement
114 of its last and best offer, or the recommendation of the fact-finder,
115 if a fact-finding report and recommendations have been issued,
116 and immediately shall give written notice of the selection to the
117 parties. The selection shall be final and binding upon the parties
118 and upon the appropriate legislative body. Within thirty calendar
119 days of the last and best offer selection and award, the impartial
120 chairperson of the arbitration panel or, the single arbitrator, shall
121 issue a written opinion inclusive of an analysis of all statutory fac-
122 tors applicable to the proceedings. At any time before the ren-
123 dering of an award, the chairman of the arbitration panel or single
124 arbitrator, if he is of the opinion that it would be useful or benefi-
125 cial to do so, may remand the dispute to the parties for further col-
126 lective bargaining for the period not to exceed three weeks and
127 notify the board of the remand. If the dispute is remanded for fur-
128 ther collective bargaining the time provisions of this act shall be
129 extended for a time period equal to that of the remand. In the
130 event that the representatives of the parties mutually resolve each
131 of the issues in dispute and agree to be bound accordingly, said
132 representatives may, at any time prior to the final decisions by the
133 panel, or single arbitrator, request that the arbitration proceedings
134 be terminated, the panel, acting through its chairman or single

135 arbitrator, shall terminate the proceedings. The factors among
136 others, to be given weight by the arbitration panel or single arbi-
137 trator in arriving at the decision shall include: (1) The financial
138 ability of the municipality to meet costs. Such factors which shall
139 be taken into consideration shall include but not be limited to:
140 (a) the city, town or district's state reimbursements and assess-
141 ments; (b) the city, town or district's long and short term bonded
142 indebtedness; (c) the city, town or district's estimated share in the
143 metropolitan district commission deficit; or (d) the city, town, or
144 district's estimated share in the Massachusetts Bay Transportation
145 Authority's deficit; and (e) consideration of the average per capita
146 property tax burden, average annual income of members of the
147 community, the effect any accord by the panel or single arbitrator
148 might have on the respective property tax rates of the city or town.
149 (2) The interests and welfare of the public. (3) The hazards of
150 employment, physical, educational and mental qualifications, job
151 training and skills involved. (4) A comparison of wages, hours
152 and conditions of employment of the employees involved in the
153 arbitration proceedings with the wages, hours and conditions of
154 employment of other employees performing similar services and
155 with other employees generally in public and private employment
156 in comparable communities. (5) The decisions and recommenda-
157 tions of the, fact-finder, if any. (6) The average consumer prices
158 for goods and services, commonly known as the cost of living.
159 (7) The overall compensation presently received by the
160 employees, including direct wages and fringe benefits.
161 (8) Changes in any of the foregoing circumstances during the pen-
162 dency of the arbitration proceedings. (9) Such other factors, not
163 confined to the foregoing, which are normally or traditionally
164 taken into consideration in the determination of wages, hours and
165 conditions of employment through voluntary collective bar-
166 gaining, mediation fact-finding, arbitration or otherwise between
167 parties, in the public service or in private employment. (10) The
168 stipulation of the parties. Any determination or decision of the
169 arbitration panel or single arbitrator if supported material and sub-
170 stantive evidence on the whole record shall be binding upon the
171 parties and may be enforced at the instance of either party, the
172 single arbitrator or the arbitration panel in the superior court in
173 equity, provided however, that the scope of arbitration in police

174 matters shall be limited to wages, hours, and conditions of
175 employment and shall not include the following matters of
176 inherent managerial policy; the right to appoint, promote, assign,
177 and transfer employees; and provided, further, that the scope of
178 arbitration in firefighter matters shall not include the right to
179 appoint and promote employees. Assignments shall not be within
180 the scope; provided, however, that the subject matter of initial sta-
181 tion assignment upon appointment or promotion shall be within
182 the scope of arbitration. The subject matter of transfer shall not be
183 within the scope of arbitration, provided however, that the subject
184 matters of relationship of seniority to transfers and disciplinary
185 and punitive transfers shall be within the scope of arbitration.
186 Notwithstanding any other provisions of this chapter to the con-
187 trary, no municipal employer shall be required to negotiate over
188 subjects of minimum manning of shift coverage, with an
189 employee organization representing municipal police officers and
190 firefighters. The commencement of a new municipal finance year
191 prior to the final awards by the arbitration panel shall not be
192 deemed to render a dispute moot, or to otherwise impair the juris-
193 diction or authority of the arbitration panel or its award. Any
194 award of the arbitration panel may be retroactive to the expiration
195 date of the last contract. If a municipal employer, or an employee
196 organization willfully disobeys a lawful order of enforcement pur-
197 suant to this section, or willfully encourages or offers resistance to
198 such order, whether by strike or otherwise, the punishment for
199 each day that such contempt continues may be a fine for each day
200 to be determined at the discretion of said court. Each of the parties
201 shall provide compensation for the arbitrator which he has
202 selected pursuant to this section. The remaining costs of arbitra-
203 tion proceedings under this section shall be divided equally
204 between the parties. Compensation for the arbitrators shall be in
205 accordance with a schedule of payment established by the Amer-
206 ican Arbitration Association. No member of a unit of municipal
207 police officers or firefighters who is employed on a less than full-
208 time basis shall be subject to the provisions of this section.